

FILED
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STATE OF WASHINGTON
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No. 103614-1

SUPREME COURT
OF THE STATE OF WASHINGTON

JODY AUCOIN, individually and as personal representative of
the Estate of DUCAS AUCOIN; HOLLAND AUCOIN; and
TELLIS AUCOIN,

Respondents,

v.

LEONARDI LANDSCAPING, INC.,

Petitioner,

and

C4DIGS, INC.; HOL-MAC CORPORATION dba DONKEY
FORKLIFTS; and JOHN DOES 1-5,

Defendants.

LEONARDI LANDSCAPING, INC.'S
RESPONSE TO AGC *AMICUS* MEMORANDUM

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A. INTRODUCTION

The Associated General Contractors of Washington (“AGC”) has submitted an *amicus curiae* memorandum in support of review to which this Court by its January 22, 2025 letter has authorized the parties to respond.

Division I’s published opinion substantially expands potential liability for all contractors by broadening the scope of what constitutes a “jobsite.” As AGC argues, that opinion fails to adequately define the parameters of a “jobsite” for purposes of that expanded liability, a critical point for Washington’s construction industry, meriting this Court’s review. RAP 13.4(b)(4).

The Court’s opinion also treats the issue of subcontractor control of a jobsite, concluding that subcontractors may be liable for activities over which they lack control, contrary to well-established construction law precedent meriting this Court’s review. RAP 13.4(b)(1), (2).

B. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Although Division I's published opinion spends the bulk of its discussion on the duty owed by a general contractor to a person on a construction jobsite, *op.* at 5-17, the Court's opinion expands the scope of the duty of general contractors and subcontractors alike for workplace safety on a construction site to offsite locales without real guardrails as to the scope of such a duty.¹ AGC addresses the duty of general contractors, an issue of first impression, but it correctly notes that this duty analysis applies with equal force as to subcontractors. AGC memo. at 11 n.1. AGC's argument only reinforces the argument of C4Digs and Leonardi's as well. Leonardi pet. at 6-10. This issue of first impression merits review. RAP 13.4(b).

¹ If, as Division I and Aucoin believe, the off-site location of the injury is not relevant, *op.* at 20, and control by a subcontractor can arise from merely scheduling a delivery, *op.* at 19, a delivery person injured in a traffic accident miles from the construction site can claim the subcontractor was liable for placing the delivery on a route where the accident occurred.

However, review here is also merited on Division I's limited analysis (op. at 17-21) of the question of subcontractors' duty for workplace injuries arising out of control of the worksite, a question that is all too common where worksites routinely involve general contractors and subcontractors.

Leonardi's petition described how this Court has approached requisite control by general contractors and jobsite owners over the worksite to establish their liability for injuries to persons on those jobsites. Leonardi pet. at 6-10. This Court's most recent jobsite liability case, *Vargas v. Inland Washington LLC*, 194 Wn.2d 720, 735-38, 452 P.3d 1205 (2019), addressing a general contractor's common law duty for injuries to persons arising out of the worksite, does not specifically speak to subcontractor control of the jobsite.

Neither the *Vargas* court nor Division I addressed the requisite control for liability of subcontractors for injuries to employees. The existing decisional law, discussed in Leonardi's petition at 15-20, provides that the subcontractor must control the

particular hazard or the particular workers at issue on the jobsite for liability to exist.² *Dep't of Labor & Indus. v. Tradesmen Int'l LLC*, 198 Wn.2d 524, 540-41, 497 P.3d 353 (2021); *Gilbert H. Moen Co. v. Inland Steel Erectors, Inc.*, 128 Wn.2d 745, 912 P.2d 472 (1996); *Martinez Melgoza & Assocs. v. Dep't of Labor & Indus.*, 125 Wn. App. 843, 848-49, 106 P.3d 776, *review denied*, 155 Wn.2d 1015 (2005); *Ward v. Ceco Corp.*, 40 Wn. App. 619, 699 P.2d 814, *review denied*, 104 Wn.2d 1004 (1985).

Ultimately, despite Leonardi's obvious lack of control over the worksite, Aucoin's delivery work, or Aucoin himself, Division I seemingly *assumed* that Leonardi had requisite control over Aucoin because it scheduled the delivery. Op. at 19. But that notion of "control" makes little real world sense. A subcontractor does not control a jobsite, the delivery person, or the delivery person's work merely by telling the delivery firm to

² Aucoin believes that control of the work is all that is necessary. Resp. to Leonardi PFR at 11. Aucoin found such "control" in the mere scheduling of the delivery. *Id.* at 10, 14 n.1.

drop off materials on a Tuesday.

The question of whether a subcontractor's liability to injured persons in a workplace requires control by that subcontractor over the workplace is a question of major significance to subcontractors throughout our State because this issue arises constantly on any construction jobsite where subcontractors are present. Aucoin should have had to demonstrate Leonardi's actual control over the jobsite, Aucoin, or his performance of the work in order for Leonardi to be liable for his injuries. Leonardi had no right to control Aucoin's performance of his delivery duties, nor did it control the physical location or instrumentality of his harm, merely by scheduling a delivery. Review of Division I's published opinion is merited. RAP 13.4(b)(1), (2), (4).

C. CONCLUSION

AGC's *amicus* memorandum only confirms that Division I's published opinion is contrary to this Court's precedent and public policy. This Court should grant review under RAP

13.4(b)(1), (2), (4), and affirm the summary judgment in Leonardi's favor.

This document contains 831 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 3rd day of February, 2025.

Respectfully submitted,

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DECLARATION OF SERVICE

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 3, 2025 at Seattle, Washington.

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